

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ANTHONY J. BURRIOLA,

3:04-CV-346 JCM (RAM)

**Plaintiff,**

V.

NEVADA DEPARTMENT OF  
CORRECTIONS,

**Defendant.**

## ORDER

Presently before the court is a referral notice from the Ninth Circuit. (Doc. # 224).

16 This case was filed by prisoner plaintiff Anthony J. Burriola, appearing pro se, in 2004.  
17 Plaintiff's complaint was filed pursuant to 42 U.S.C. § 1983 alleging wrongdoing by Nevada  
18 Correctional facility staff violating plaintiff's civil rights. This included being denied shoulder  
19 surgery and treatment for the related pain, amongst other wrongdoing.

In September 2009, Cal J. Potter, III, appeared as attorney of record for plaintiff. (Doc. # 169). On July 7, 2011, the parties submitted a stipulation and order for dismissal with prejudice. (Doc. # 208). On July 8, 2011, the court entered an order for dismissal with prejudice. (Doc. # 209). As part of the basis of the settlement between the parties, plaintiff was to receive surgery on his shoulder. (Doc. # 212, ¶ 14). However, it appears that plaintiff has since refused medical treatment. (*Id.*, ¶ 25, Ex. 18).

26 On April 25, 2013, plaintiff filed a motion to reopen the case because plaintiff argues that  
27 dismissal was based on fraud. (Doc. # 216). The court denied the motion as untimely and for failing

1 to satisfy the standard to warrant this court's reconsideration of its final order dismissing this case  
2 with prejudice. (Doc. # 220). The instant appeal followed. (Doc. # 221).

3 The court finds that the appeal of this court's order is not taken in good faith and that the  
4 appeal is frivolous. This court's order denying plaintiff's request for reconsideration of its final order  
5 (doc. # 209) was squarely within the Federal Rules of Civil Procedure 59 and 60. (*See* doc. # 220).  
6 Plaintiff failed to satisfy his burden to warrant this court's reconsideration of its final order.<sup>1</sup>

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in response to the Ninth  
9 Circuit's referral notice (doc. # 224), the court certifies that the appeal is frivolous and not taken in  
10 good faith.

11 DATED July 23, 2013.

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13 **UNITED STATES DISTRICT JUDGE**  
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27 <sup>1</sup> The appellate court, however, may grant in forma pauperis status on appeal. *See O'Neal v. Price*, 531 F.3d  
28 1146, 1149 (9th Cir. 2008) ("[S]ubsections (a)(4) and (5) of Rule 24 of the Federal Rules of Appellate Procedure give  
litigants a procedural route for challenging the trial court's certification.").